

REMARKS

Claims 1, 4-9, 11-21, and 25-32 are pending in the application, with claims 28-32 being withdrawn. Claims 1, 4-9, 11-21, and 25-27 have been rejected. By this amendment, the Applicants have amended claims 1, 4-9, 14, 15, 20, 21, 25 and 26 and cancelled claims 27-32. In addition, new claims 33-43 have been added. Support for new claims 33 and 34 is found in the specification at page 4, lines 6-15. Support for new claim 35 is found in the specification at page 5, line 29 to page 6, line 7. Support for new claims 36-42 are found in claims 4, 5, 7-9 and 11-13. Support for new claim 43 is found in claim 1 and in the specification at page 3, lines 14-16. Accordingly, no new matter has been added by the amendments.

The Applicants respond to the specific issues raised in the July 1, 2011 final Office Action as follows:

The Present Invention

The present invention as set forth in the amended claims is directed to a batter composition or a food product, wherein at least part of the surface of the food product comprises a batter composition comprising insoluble vegetable protein and insoluble dietary fibers. The protein and the fibers have been isolated from their source and at least part of the surface that includes the batter composition contains bread crumbs. Moreover, the vegetable protein is highly insoluble and has a solubility in distilled water at 20°C and a pH of about 7 of about 10 wt. % or less, based upon the total weight of the solution.

The Applicants' invention is intended to overcome the difficulties associated with coated fried food products, which until the time of the invention could not retain crispiness for a long time after reheating, in particular after reheating by microwave. The Applicants found that when using insoluble vegetable proteins and isolated insoluble dietary fibers in a food coating, the coatings on such products remain crispy for a prolonged period of time after reheating.

Claim Rejections 35 U.S.C. 102(b) and 103(a) – Jensen

Claims 1, 4, 5, 7, and 11-13 have been rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 6,306,447 to Jensen (“Jensen”). By this amendment, the Applicants have amended the claims so that they now require a batter composition comprising a vegetable protein that “has a solubility in distilled water at 20°C and a pH of about 7 of about 10 wt. % or less, based upon the total weight of the solution.”

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Jensen neither teaches nor suggests a batter composition that includes a protein that is substantially insoluble. Accordingly, claims 1, 4, 5, 7, and 11-13 are not anticipated by Jensen and the Applicants respectfully request that the rejections be withdrawn.

Claim 6 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen. As discussed above with respect to claims 1, 4, 5, 7, and 11-13, Jensen neither teaches nor suggests a batter composition that includes a protein that has a solubility in distilled water at 20°C and a pH of about 7 of about 10 wt. % or less, based upon the total weight of the solution. Accordingly, claim 6 would not be obvious in view of Jensen and the Applicants respectfully request that the rejection be withdrawn.

Claim Rejections 35 U.S.C. 103(a) – Bengtsson and Landon

Claims 1, 4-9, 11-21, and 25-27 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,272,553 to Bengtsson, et al. (“Bengtsson”) in view of Australian Patent Application No. 54821/90 to Landon (“Landon”).

Bengtsson discloses a process for preparing coated fried vegetables, wherein the coating may be prepared from any of a long list of possible ingredients (col. 2, lines 31-40). Among these are potato fibers or fibrous by-products and protein concentrate or isolate. The effect of application of the coating of Bengtsson is that products remain crispy for a prolonged period of time when reheated by oven, frying pan or oil (column 4, lines 3-12). Bengtsson does not mention the use of microwave irradiation for reheating, and Bengtsson does not mention that proteins for use in the coating should be insoluble. Also, Bengtsson does not mention a basis on which to make a choice from the long list of ingredients when wishing to prolong crispiness after reheating in the microwave.

The Office Action states in paragraph 14 on page 5 that *Bengtsson, “does not specifically teach insoluble vegetable protein.”* In order to overcome this admitted deficiency in Bengtsson, Landon has been cited as allegedly teaching a food product containing an insoluble vegetable protein.

Landon discloses the use of dairy and/or soy proteins for use in a food coating, among a long list of other possible ingredients. Products coated according to the procedure of Landon are stated to be crispy after reheating in the microwave, although they “should be served soon after cooking” (p. 7, line 19) and, therefore, do not remain crispy for a long time. Landon, like Bengtsson, does not mention that proteins for use in the coating should be insoluble. As Landon is not concerned with stretching the timeframe in which reheated products remain crispy, Landon does not teach what ingredients should be chosen for coatings that are to display crispiness for a prolonged period of time after reheating by microwave.

The Office Action states in paragraph 15 on page 5 that:

Landon teaches a batter composition for coating vegetables (Page 3, lines 30-34), comprising a filling agent in the form of casein or soya milk proteins or soya protein (Page 5, lines 1-5), where soya milk protein or soya proteins are considered insoluble vegetable protein in light of Claim 7 and casein is considered an insoluble dairy protein in light of original Claim 2. Landon teaches that soya protein is typically used in the batter (Page 5, lines 5-6). Landon teaches proteins isolated from their sources because Landon teaches the proteins themselves.

The Applicants respectfully disagree with the findings based on the interpretation of Landon. The Office Action states at page 11, lines 2-3 that: *“it is known in the art that protein materials such as soy protein contain both soluble and insoluble protein.”* The claims require

the protein to be “isolated from [its] source” (claim 1) and the specification discloses various processes for isolating protein (p. 6, line 27 to p. 7, line 18). One skilled in the art would understand that the solubility of the isolated protein depends on the isolation process and the process conditions. Therefore, obtaining an isolated vegetable protein with “a solubility in distilled water at 20°C and a pH of about 7 of about 10 wt. % or less, based upon the total weight of the solution” as required by the claims would not be obvious in view of Landon as the Office Action alleges. Landon neither teaches nor suggests the characteristics of a low solubility vegetable protein, or the surprisingly beneficial effects when a batter composition that includes a low solubility vegetable protein is used as a coating on a food product.

Even though Landon teaches soya milk proteins and soya protein that may contain both soluble and insoluble proteins, it would not be obvious to one skilled in the art from the teachings of Landon to use an isolation process that produces a protein with a low solubility. Moreover, there is no teaching or suggestion in Landon that the protein should be isolated so that it has a solubility of about 10 wt. % or less. In fact, Landon makes no mention of the solubility of the protein, nor does Landon disclose the importance of using an insoluble vegetable protein to extend the time during which a food product remains crispy. Accordingly, one skilled in the art would not find claims 1, 4-9, 11-21, and 25-27 to be obvious in view of a combination of Bengtsson and Landon.

Additional Claims Fee

By this Amendment, a total of eleven (11) new claims were added—one (1) independent claim and ten (10) dependent claims. One claim was amended and rewritten in independent form

(claim 15). In addition, six (6) claims were cancelled—one (1) independent claim and five (5) dependent claims. Accordingly, a *total additional claims fee of \$550.00* is now due—\$250.00 for one (1) additional independent claim in excess of four (4) and \$300.00 for five (5) additional claims in excess of twenty (20). Please charge this amount to Deposit Account No. **08-2461**.

Conclusion

The Applicants submit that the amendments to the claims and the accompanying arguments have overcome the rejections of the claims and respectfully request that all of the claims be allowed.

If the Examiner has any questions or comments relating to the present application, she is respectfully invited to contact Applicants' attorney at the telephone number set forth below.

Respectfully submitted,

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